

IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURISOUTHERN DIVISION

MONICA DANIEL HUTCHISON,)

Plaintiff,)

vs.)

TEXAS COUNTY, MISSOURI;)

MICHAEL R. ANDERSON,)

TEXAS COUNTY PROSECUTING)

ATTORNEY; and)

MICHAEL R. ANDERSON, individually)

Defendants.)

Case No.: 09-3018-CV-S-RED

Jury Trial Demanded

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

INSTRUCTION _____

As you have heard, there is a typewritten transcript of the tape recording you are about to hear. That transcript also undertakes to identify the speakers engaged in the conversation.

You are permitted to have the transcript for the limited purpose of helping you follow the conversation as you listen to the tape recording, and also to help you identify the speakers. The tape recording is evidence for you to consider. The transcript, however, is not evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you hear on the tape recording. The tape recording itself is the primary evidence of its own contents. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

Differences between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice, or by inaccuracies in the transcript.

You should, therefore, rely on what you hear rather than what you read when there is a difference.

INSTRUCTION _____

Your verdict must be for the plaintiff on the plaintiff's First Amendment retaliation claim if the following elements have been proved:

First, the defendant discharged the plaintiff; and

Second, the plaintiff's complaints regarding defendant's harassment, was a motivating factor in the defendant's actions; and

Third, the defendant was acting under color of state law.

However, your verdict must be for defendant if any of the above elements has not been proved, or if it has been proved that the defendant would have discharged the plaintiff regardless of her complaints regarding defendant's harassment. You may find that the plaintiff's sex was a motivating factor in the defendant's actions if it has been proved that the defendant's stated reasons for his actions are not the real reasons, but are a pretext to hide sex discrimination.

INSTRUCTION _____

If you find in favor of the plaintiff under Instruction _____, then you must award the plaintiff such sum as you find will fairly and justly compensate the plaintiff for any actual damages you find the plaintiff sustained as a direct result of the defendant's conduct as submitted in Instruction _____. Actual damages include any wages or fringe benefits you find the plaintiff would have earned in her employment with the defendant if she had not been discharged on December 2, 2005, through the date of your verdict, *minus* the amount of earnings and benefits from other employment received by the plaintiff during that time. Actual damages also may include future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

INSTRUCTION _____

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award punitive damages.

If you find in favor of the plaintiff and against defendant, and if it has been proved that the plaintiff's firing was motivated by evil motive or intent, or that the defendant acted with reckless indifference to the plaintiff's rights, then in addition to any other damages to which you find the plaintiff entitled, you may, but are not required to, award the plaintiff an additional amount as punitive damages for the purposes of punishing the defendant for engaging in such misconduct and deterring the defendant and others from engaging in such misconduct in the future. The defendant acted with reckless indifference if:

it has been proved that Michael Anderson knew that his actions were in violation of the law prohibiting retaliation or acted with reckless disregard of that law.

You should presume that a plaintiff has been made whole for her injuries by the damages awarded under Instruction _____.

If you decide to award punitive damages, you should consider the following in deciding the amount of punitive damages to award:

1. How reprehensible the defendant's conduct was. In this regard, you may consider whether the harm suffered by the plaintiff was physical or economic or both; whether there was violence, deceit, intentional malice, reckless disregard for human health or safety; whether the defendant's conduct that harmed the plaintiff also or posed a risk of harm to others; and whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed the plaintiff.

2. How much harm the defendant's wrongful conduct caused the plaintiff and could

cause the plaintiff in the future.

3. What amount of punitive damages, in addition to the other damages already awarded, is needed, considering the defendant's financial condition, to punish the defendant for his wrongful conduct toward the plaintiff and to deter the defendant and others from similar wrongful conduct in the future;

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to the plaintiff.

VERDICT

Note: Complete this form by writing in the names required by your verdict.

On the First Amendment Retaliation claim of plaintiff Monica Daniel Hutchison as submitted in Instruction _____, we find in favor of

(Plaintiff Monica Daniel Hutchison) or (Defendant Michael R. Anderson)

Note: Complete the following paragraphs only if the above finding is in favor of the plaintiff. If the above finding is in favor of the defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find plaintiff's Monica Daniel Hutchison's damages as defined in Instruction _____ to be:

\$_____ (stating the amount).

We assess punitive damages against defendant Michael R. Anderson, as submitted in Instruction _____, as follows:

\$_____ (stating the amount or, if none, write the word "none").

Foreperson

Dated: _____

INSTRUCTION _____

Your verdict must be for the plaintiff on the plaintiff's First Amendment retaliation claim if the following elements have been proved:

First, the defendant made the plaintiff's working conditions intolerable; and

Second, the plaintiff's the plaintiff's complaints regarding defendant's harassment, or the plaintiff's statements regarding defendant's actions on December 18, 2005, was a motivating factor in the defendant's actions; and

Third, the plaintiff's resignation was a reasonably foreseeable result of the defendant's actions; and

Fourth, the defendant was acting under color of state law.

Working conditions are intolerable if a reasonable person in the plaintiff's situation would have deemed resignation the only reasonable alternative.

However, your verdict must be for defendant if any of the above elements has not been proved. You may find that the plaintiff's complaints regarding defendant's harassment, or the plaintiff's statements regarding defendant's actions on December 18, 2005, was a motivating factor in the defendant's actions if it has been proved that the defendant's stated reasons for his actions are not the real reasons, but are a pretext to hide discrimination.

INSTRUCTION _____

If you find in favor of the plaintiff under Instruction _____, then you must award the plaintiff such sum as you find will fairly and justly compensate the plaintiff for any actual damages you find the plaintiff sustained as a direct result of the defendant's conduct as submitted in Instruction _____. Actual damages include any wages or fringe benefits you find the plaintiff would have earned in her employment with the defendant if she had not been discharged on December 23, 2005, through the date of your verdict, *minus* the amount of earnings and benefits from other employment received by the plaintiff during that time. Actual damages also may include future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

INSTRUCTION _____

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award punitive damages.

If you find in favor of the plaintiff and against defendant, and if it has been proved that the plaintiff's constructive discharge was motivated by evil motive or intent, or that the defendant acted with reckless indifference to the plaintiff's rights, then in addition to any other damages to which you find the plaintiff entitled, you may, but are not required to, award the plaintiff an additional amount as punitive damages for the purposes of punishing the defendant for engaging in such misconduct and deterring the defendant and others from engaging in such misconduct in the future. The defendant acted with reckless indifference if:

it has been proved that Michael Anderson knew that his actions were in violation of the law prohibiting retaliation or acted with reckless disregard of that law.

You should presume that a plaintiff has been made whole for her injuries by the damages awarded under Instruction _____.

If you decide to award punitive damages, you should consider the following in deciding the amount of punitive damages to award:

1. How reprehensible the defendant's conduct was. In this regard, you may consider whether the harm suffered by the plaintiff was physical or economic or both; whether there was violence, deceit, intentional malice, reckless disregard for human health or safety; whether the defendant's conduct that harmed the plaintiff also or posed a risk of harm to others; and whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed the plaintiff.

2. How much harm the defendant's wrongful conduct caused the plaintiff and could cause the plaintiff in the future.

3. What amount of punitive damages, in addition to the other damages already awarded, is needed, considering the defendant's financial condition, to punish the defendant for his wrongful conduct toward the plaintiff and to deter the defendant and others from similar wrongful conduct in the future;

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to the plaintiff.

VERDICT

Note: Complete this form by writing in the names required by your verdict.

On the First Amendment Retaliation claim of plaintiff Monica Daniel Hutchison as submitted in Instruction _____, we find in favor of

(Plaintiff Monica Daniel Hutchison) or (Defendant Michael R. Anderson)

Note: Complete the following paragraphs only if the above finding is in favor of the plaintiff. If the above finding is in favor of the defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find plaintiff's Monica Daniel Hutchison's damages as defined in Instruction _____ to be:

\$_____ (stating the amount).

We assess punitive damages against defendant Michael R. Anderson, as submitted in Instruction _____, as follows:

\$_____ (stating the amount or, if none, write the word "none").

Foreperson

Dated: _____

INSTRUCTION _____

Your verdict must be for the plaintiff on the plaintiff's sex discrimination claim if the following elements have been proved:

First, the defendant made the plaintiff's working conditions intolerable; and

Second, the plaintiff's gender was a motivating factor in the defendant's actions; and

Third, the plaintiff's resignation was a reasonably foreseeable result of the defendant's actions; and

Fourth, the defendant was acting under color of state law.

Working conditions are intolerable if a reasonable person in the plaintiff's situation would have deemed resignation the only reasonable alternative.

However, your verdict must be for defendant if any of the above elements has not been proved. You may find that the plaintiff's sex was a motivating factor in the defendant's actions if it has been proved that the defendant's stated reasons for his actions are not the real reasons, but are a pretext to hide sex discrimination.

INSTRUCTION _____

If you find in favor of the plaintiff under Instruction _____, then you must award the plaintiff such sum as you find will fairly and justly compensate the plaintiff for any actual damages you find the plaintiff sustained as a direct result of the defendant's conduct as submitted in Instruction _____. Actual damages include any wages or fringe benefits you find the plaintiff would have earned in her employment with the defendant if she had not been discharged on December 23, 2005, through the date of your verdict, *minus* the amount of earnings and benefits from other employment received by the plaintiff during that time. Actual damages also may include future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

INSTRUCTION _____

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award punitive damages.

If you find in favor of the plaintiff and against defendant, and if it has been proved that the plaintiff's firing was motivated by evil motive or intent, or that the defendant was recklessly indifferent to the plaintiff's rights, then in addition to any other damages to which you find the plaintiff entitled, you may, but are not required to, award the plaintiff an additional amount as punitive damages for the purposes of punishing the defendant for engaging in such misconduct and deterring the defendant and others from engaging in such misconduct in the future. You should presume that a plaintiff has been made whole for her injuries by the damages awarded under Instruction _____.

If you decide to award punitive damages, you should consider the following in deciding the amount of punitive damages to award:

1. How reprehensible the defendant's conduct was. In this regard, you may consider whether the harm suffered by the plaintiff was physical or economic or both; whether there was violence, deceit, intentional malice, reckless disregard for human health or safety; whether the defendant's conduct that harmed the plaintiff also caused harm or posed a risk of harm to others; and whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed the plaintiff.

2. How much harm the defendant's wrongful conduct caused the plaintiff and could cause the plaintiff in the future.

3. What amount of punitive damages, in addition to the other damages already awarded, is needed, considering the defendant's financial condition, to punish the defendant for his wrongful

conduct toward the plaintiff and to deter the defendant and others from similar wrongful conduct in the future.

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to the plaintiff.

VERDICT

Note: Complete this form by writing in the names required by your verdict.

On the sex discrimination claim of plaintiff Monica Daniel Hutchison as submitted in Instruction _____, we find in favor of

(Plaintiff Monica Daniel Hutchison) or (Defendant Michael R. Anderson)

Note: Complete the following paragraphs only if the above finding is in favor of the plaintiff. If the above finding is in favor of the defendant, have your foreperson sign and date this form because you have completed your deliberation on this claim.

We find plaintiff's Monica Daniel Hutchison's damages as defined in Instruction _____ to be:

\$_____ (stating the amount).

We assess punitive damages against defendant Michael R. Anderson, as submitted in Instruction _____, as follows:

\$_____ (stating the amount or, if none, write the word "none").

Foreperson

Dated: _____

INSTRUCTION _____

Your verdict must be for plaintiff Monica Daniel Hutchison on her claim for abuse of process against defendant Michael R. Anderson if you believe:

First that defendant Michael R. Anderson either:

(a) filed and prosecuted a lawsuit against plaintiff for the improper purpose of silencing plaintiff from making truthful statements concerning defendant; or

(b) filed and prosecuted a lawsuit against plaintiff for the improper purpose of deterring plaintiff from pursuing a claim of employment discrimination on the basis of sex; or

(c) obtained a subpoena for investigation ordering plaintiff to produce recorded statements of defendant for the improper purpose of silencing plaintiff from making truthful statements concerning defendant; or

(d) obtained a subpoena for investigation ordering plaintiff to produce recorded statements of defendant for the improper purpose of deterring plaintiff from pursuing a claim of employment discrimination on the basis of sex; and

Second, that defendant thereby made an illegal, improper, perverted use of process, a use neither warranted nor authorized by the process, and

Third, that plaintiff was thereby damaged.

The phrase “use of process” as used in paragraph second of this instruction means “some willful, definite act not authorized by the process or aimed at an objective not legitimate in the proper employment of such process.”

INSTRUCTION _____

If you find in favor of plaintiff under Instruction _____, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any damages you believe plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the conduct of defendant submitted in Instruction No. _____.

VERDICT _____

Note: Complete this form by writing in the names required by your verdict.

On the claim of plaintiff Monica Daniel Hutchison for abuse of process against defendant Michael R. Anderson as submitted in Instruction _____, we find in favor of

— (Plaintiff Monica Daniel Hutchison) or (Defendant Michael R. Anderson)

Note: Complete the following paragraphs only if the above finding is in favor of the plaintiff Monica Daniel Hutchison.

We assess the damages of plaintiff Monica Daniel Hutchison as follows:

For actual damages \$_____ (stating the amount).

For punitive damages \$_____ (stating the amount or, if none, write the word "none").

Foreperson

Dated: _____

VERDICT _____

Note: Complete this form by writing in the names required by your verdict.

On the claim of plaintiff Monica Daniel Hutchison for malicious prosecution against defendant Michael R. Anderson as submitted in Instruction _____, we find in favor of

— (Plaintiff Monica Daniel Hutchison) or (Defendant Michael R. Anderson)

Note: Complete the following paragraphs only if the above finding is in favor of the plaintiff Monica Daniel Hutchison.

We assess the damages of plaintiff Monica Daniel Hutchison as follows:

For actual damages \$_____ (stating the amount).

the For punitive damages \$_____ (stating the amount or, if none, write word "none").

Foreperson

Dated: _____

INSTRUCTION _____

If you find in favor of plaintiff under Instruction _____, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any damages you believe plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the conduct of defendant submitted in Instruction No. _____.

INSTRUCTION _____

Your verdict must be for plaintiff if you believe:

First, defendant instigated a judicial proceeding against plaintiff that terminated in favor of plaintiff, and

Second, in so doing defendant acted maliciously and without reasonable grounds, and

Third, plaintiff was thereby damaged.

The term "maliciously" as used in this instruction means acting with reckless indifference to the rights of others or acting primarily for a purpose other than bringing an offender to justice.

The phrase "reasonable grounds" as used in this instruction means that under the circumstances an ordinarily careful person after having made a reasonable inquiry would have believed the facts alleged and that the judicial proceeding was valid.

VERDICT _____

Note: Complete this form by writing in the names required by your verdict.

On the claim of plaintiff Monica Daniel Hutchison for intentional infliction of emotional distress against defendant Michael R. Anderson as submitted in Instruction _____, we find in favor of

— (Plaintiff Monica Daniel Hutchison) or (Defendant Michael R. Anderson)

Note: Complete the following paragraphs only if the above finding is in favor of the plaintiff Monica Daniel Hutchison.

We assess the damages of plaintiff Monica Daniel Hutchison as follows:

For actual damages \$_____ (stating the amount).

For punitive damages \$_____ (stating the amount or, if none, write the word "none").

Foreperson

Dated: _____

INSTRUCTION _____

If you find in favor of plaintiff under Instruction _____, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any damages you believe plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the conduct of defendant submitted in Instruction _____.

INSTRUCTION _____

Your verdict must be for plaintiff if you believe:

First, defendant in the early morning hours of December 18, 2005 either:

made multiple phone calls to plaintiff, or
banged on the door of plaintiff's house; or
cursed plaintiff; and

Second, defendant acted intentionally or recklessly, and

Third, defendant's conduct was outrageous or extreme, and

Fourth, defendant's sole intention was to cause extreme emotional distress to the plaintiff,
and

Fifth, plaintiff thereby suffered extreme emotional distress.

Respectfully Submitted,

STEELMAN, GAUNT & HORSEFIELD

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, Stephen F. Gaunt, hereby certify that on the 18th day of March, 2011 the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to:

Warren E. Harris
Lance Roskens
Taylor, Stafford, Clithero, Fitzgerald & Harris, LLP
3315 East Ridgeview, Ste. 1000
Springfield, MO 65804
Counsel for Defendant Michael Anderson

/s/ Stephen F. Gaunt
Stephen F. Gaunt